

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of
the Continued Association of
Catherine Ann Sheridan
as a
General Securities Representative
with
Race Rock Capital, LLC

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-2123

February 22, 2018

I. Introduction

On July 18, 2016, Race Rock Capital, LLC (the “Firm”) filed a Membership Continuance Application (“MC-400” or the “Application”) with FINRA’s Department of Registration and Disclosure (“RAD”). The Application seeks to permit Catherine Ann Sheridan, a person subject to statutory disqualification, to continue to associate with the Firm as a general securities representative. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Regulation (“Member Regulation”) recommended to the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, that it approve Sheridan’s continued association with the Firm pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application to permit Sheridan to continue to associate with the Firm as a general securities representative.

II. The Statutorily Disqualifying Event

Sheridan is statutorily disqualified due to FINRA's acceptance, on April 25, 2016, of a Letter of Acceptance, Waiver and Consent ("AWC"). The AWC found that Sheridan willfully failed to disclose on her Uniform Application for Securities Industry Registration or Transfer ("Form U4") two federal tax liens filed against her.¹ Specifically, the Internal Revenue Service filed a lien against Sheridan in September 2014 totaling \$151,763. It filed another lien against Sheridan in December 2014 totaling \$137,213.² Sheridan disclosed the September 2014 lien more than five months late and the December 2014 lien approximately four months late. In connection with these disclosure failures, FINRA suspended Sheridan for two months and fined her \$10,000. Sheridan has served her suspension and paid the fine in full.

III. Background Information

A. Sheridan

1. *Registration History*

Sheridan first registered as a general securities representative in November 1984, as an equity trader in April 2000, as a registered options principal in January 2002, and as a general securities principal in March 2004. She also passed the uniform securities agent state law examination in March 2003 and the national commodities futures examination in November 2009.³ Sheridan has been registered with the Firm since April 2015, and has previously been associated with six other firms.

2. *Customer Complaints*

Sheridan was named in two FINRA arbitrations and one civil lawsuit that stemmed from her involvement in Ulysses Partners, LLC ("Ulysses"). Sheridan and another individual, James

¹ FINRA's By-Laws provide that a person is subject to "disqualification," and thus must seek and obtain FINRA's approval prior to associating with a member firm, if she is disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). See FINRA By-Laws, Art. III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to statutory disqualification if she has willfully made a false or misleading statement of material fact, or has omitted to state a material fact required to be disclosed, in any application or report filed with a self-regulatory organization.

² The IRS released Sheridan from the September 2014 lien. The December 2014 lien remains outstanding, and Sheridan has submitted a settlement offer to the IRS that is under consideration in connection with this lien.

³ The Application states that Sheridan will serve only as a general securities representative, and the Firm terminated Sheridan's other registrations in August 2017.

Neilsen (“Neilsen”), her long-time accountant, formed Ulysses, which operated from approximately 2005 to 2010. Neilsen, through Ulysses, defrauded investors out of millions of dollars by selling unregistered securities in the form of promissory notes to finance Ulysses’s business expenses.⁴ The Firm and Member Regulation assert that despite being investigated by criminal and regulatory authorities for her role in these events, Sheridan was never charged with any wrongdoing.

In March 2016, former investors in Ulysses filed with FINRA an arbitration claim against Sheridan and broker-dealers with which Sheridan and Nielsen were previously associated, claiming \$1.4 million in damages based on allegations including failure to supervise, negligent misrepresentation, and the sale of unregistered securities. In September 2016, the arbitration panel dismissed Sheridan from this claim, finding that she “was not associated with the securities in question, had no contact with claimant and had no supervisory responsibilities with respect to the sale of securities which [were] the subject of the action.”

In October 2015, two former investors of Ulysses filed with FINRA an arbitration claim against Neilsen, Sheridan, and the broker-dealers with which they were previously affiliated. The investors alleged claims of fraud, misrepresentation, and breach of fiduciary duty, and claimed damages in excess of \$880,000. Sheridan settled this matter in February 2017 by personally paying \$50,000 to the investors, without any admission of liability.

In March 2015, five former investors in Ulysses filed in Connecticut state court a civil lawsuit against Ulysses, Neilsen, and Sheridan. The investors alleged that the defendants engaged in a multi-million dollar Ponzi scheme, and asserted claims of fraud and intentional misrepresentation (against Ulysses and Neilsen), and conspiracy to commit fraud and conversion (against Sheridan). Sheridan settled the matter in March 2017 by agreeing to pay \$175,000, without any admission of liability.

3. Liens and Compromises With Creditors

In addition to the two federal tax liens underlying the disqualifying AWC, in October 2017, the State of Illinois filed a tax lien against Sheridan totaling \$36,279. FINRA’s Central Registration Depository (“CRD”®) states that the “[l]ien has been placed by [the] state to avoid a possible statute of limitations issue, despite representative’s payment plan which has been kept current. Representative is working with counsel to have this lien removed.”

In August 2017, Sheridan entered into a compromise with a creditor in connection with a debt totaling \$24,178. CRD shows that Sheridan paid this creditor \$12,500 to settle this claim.

⁴ Neilsen ultimately pled guilty to felony wire fraud. A federal district court sentenced him to 97 months in prison and ordered that he pay \$6 million in restitution to at least 26 individuals. Separately, the Connecticut Department of Banking brought a disciplinary action against Neilsen. After trial, he was found to have engaged in the fraudulent sale of unregistered securities, and among other things, he was fined and ordered to pay restitution.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Sheridan.

B. The Firm

The Firm has been a FINRA member since December 2010 and has one office, an Office of Supervisory Jurisdiction (“OSJ”) located in Boston, Massachusetts. The Firm is a limited purpose broker-dealer that primarily assists hedge funds and private equity funds by locating and introducing the fund managers to institutional investors, and the Firm states that it does not have customer accounts, does not trade or direct the trade of securities, does not make recommendations, and does not handle cash or securities. The Firm currently employs 13 registered representatives as independent contractors, four of whom are registered as general securities principals. In addition to Sheridan, the Firm employs one other statutorily disqualified person.⁵

The Firm has no formal disciplinary history.

FINRA’s 2015 Cycle Examination of the Firm resulted in a Cautionary Action for three exceptions. FINRA cited the Firm for failing to: (1) properly review, document and monitor outside business activities (“OBAs”) of its registered representatives pursuant to its written supervisory procedures (“WSPs”) by failing to submit an OBA notification form to the designated approver; (2) keep accurate books and records with respect to certain discrepancies with the Firm’s FOCUS filings, net capital computation, and proper recordation of personal expenses; and (3) maintain all required due diligence documents pursuant to its WSPs. The Firm responded in writing that it corrected the deficiencies noted.

IV. Sheridan’s Proposed Business Activities and Supervision

The Firm proposes that Sheridan will continue to work as a general securities representative from her residence in Lake Forest, Illinois. The Firm states that Sheridan will make introductions to institutional investors on behalf of hedge fund managers, in an effort to form business relationships between the entities. The Firm receives a fee from the hedge fund manager if a relationship is formed, and Sheridan will receive a portion of that fee.

The Firm also proposes that Charles Richard Bartels, Jr. (“Bartels”), the Firm’s founder, owner, and managing director, will serve as Sheridan’s primary supervisor. Bartels currently

⁵ The other statutorily disqualified individual is subject to disqualification as the result of an SEC Order dated July 11, 2002, finding that he willfully violated federal securities laws. The Firm was not required to undergo a FINRA eligibility proceeding in connection with this individual because his sanctions are no longer in effect. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at *11-12 (Apr. 2009) (providing that for statutory disqualifications resulting from a willful violation of federal securities laws, a firm is not required to initiate a FINRA eligibility proceeding if the resulting sanction is no longer in effect).

supervises six registered representatives at the Firm, including Sheridan. Bartels works from the Firm's office in Boston, Massachusetts.

Bartels first registered in the securities industry in March 1988 as a commodities and futures trader, as a general securities representative in May 1995, as a general securities principal in June 1995, and as an operations professional in 2011.⁶ Bartels also passed the uniform securities agent state law examination in June 1995. Bartels has been associated with the Firm since March 2010, and was previously associated with three firms.

CRD shows that Bartels is involved in several outside business activities: Coolidge Rock Capital LLC (through which he offers business consulting services for one to two hours per week); Ocular Research of Boston (a non-investment related position, through which he acts as treasurer and board member for one hour per month); and Custom Blends, Inc. also known as Cindy's Kitchens (a non-investment related position, where he acts as part owner and business consultant for one-half hour per week).

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Bartels.

If Bartels is unavailable, the Firm designated Charles Andrew Bartels ("CAB") to serve as Sheridan's alternate supervisor.⁷ CAB currently serves as the Firm's chief compliance officer, a position he assumed from Bartels in August 2017, and directly supervises six individuals. CAB first registered as a general securities representative in May 1999 and as a general securities principal in February 2014. He also passed the uniform securities agent state law examination in July 1999. CAB works from his residence in Darien, Connecticut.

CAB has been associated with the Firm since January 2014, and he previously has been associated with five other firms. His CRD record reflects that, in addition to the Firm, he spends approximately 2% of his time during the week on a non-investment related outside activity (president of Fisher's Island Sportsmen's Club).

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against CAB.

V. Member Regulation's Recommendation

⁶ See *FINRA Regulatory Notice* 11-33, 2011 FINRA LEXIS 59, at *16-17 (July 2011) (providing that certain individuals may register as operations professionals without taking a qualification examination). Bartels has also been registered in several other capacities, but no longer carries those registrations.

⁷ CAB is Bartels's son.

Member Regulation recommends approval of the Firm's request for Sheridan to continue to associate with the Firm as a general securities representative, subject to the terms and conditions of heightened supervision described below.

VI. Discussion

We have carefully considered the entire record in this matter. Based on this record, and pursuant to the Commission's controlling decisions in this area, we approve the Firm's Application to employ Sheridan as a general securities representative, subject to the supervisory terms and conditions set forth below.

A. The Legal Standards

We acknowledge that Sheridan, as a registered representative, was responsible for knowing the rules of the securities industry and for timely updating her Form U4. *See, e.g., Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (table). The SEC has emphasized that Form U4 "is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public." *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *25-26 (Nov. 9, 2012). A registered representative's financial problems "raise concerns about whether [he] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional." *Id.* at *32.

We also recognize, however, that FINRA's Department of Enforcement ("Enforcement") weighed the gravity of Sheridan's failures to disclose when it executed the AWC in April 2016. After considering Sheridan's entire history in the securities industry, Enforcement concluded that a two-month suspension and \$10,000 fine were appropriate sanctions for her misconduct. Sheridan served this suspension and paid the fine in full. In such circumstances, the Commission has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in the Commission's decisions in *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981), and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). *See May Capital Group, LLC* (hereinafter "*Rokeach*"), Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at *21 (May 12, 2006) (holding that FINRA must apply *Van Dusen* standards to the membership continuance applications of statutorily disqualified individuals whose disqualifications resulted from FINRA enforcement action).

Van Dusen and *Rokeach* thus provide that in situations where an individual's misconduct has already been addressed by the Commission or FINRA, and certain sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates a statutory disqualification application. The Commission stated that when the time specified in the sanction has passed, in the absence of "new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a

manner consonant with the public interest,” it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The Commission also noted in *Van Dusen*, however, that an applicant’s re-entry is not “to be granted automatically” after the expiration of a given time period. *Id.* Instead, the Commission instructed FINRA to consider other factors, such as: (1) other misconduct in which the applicant may have engaged; (2) the nature and disciplinary history of the prospective employer; and (3) the supervision to be accorded the applicant. *Id.*

B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we have determined to approve the Firm’s Application to continue to employ Sheridan.

First, Member Regulation represents that the Application presents no new information that would warrant a denial of the Firm’s request to allow Sheridan’s continuing association as a general securities representative with the Firm. Member Regulation represents that its investigation of the arbitrations and civil litigation related to Ulysses and related matters revealed that Sheridan was never charged by any criminal or regulatory authority in connection with those events. Further, the record does not show any other complaints, regulatory actions, or criminal history since the AWC.

Second, the record shows that the Firm does not have any formal disciplinary history. The record further shows that although FINRA noted several exceptions in connection with the Firm’s most recent examination, the Firm corrected the deficiencies noted in that examination. Moreover, as discussed below, the Firm has proposed that Sheridan will be subject to a comprehensive supervisory plan. We find nothing in the record to suggest that the Firm will be unable to provide the stringent supervision necessary for a statutorily disqualified individual such as Sheridan. This is especially true given the narrow scope of Sheridan’s activities at the Firm making introductions to institutional investors on behalf of hedge fund managers.

Third, based on the record before us, we find that the Firm’s proposed plan of supervision is sufficiently stringent, comprehensive, and appropriately tailored to Sheridan’s disqualifying event, and that the supervisors designated to administer the plan are capable of doing so. The primary designated supervisor, Bartels, is well qualified, has been in the securities industry for 28 years, and the record shows that he has no disciplinary or regulatory history. Although Bartels currently serves as the Firm’s managing director, the Firm shifted his duties as its chief compliance officer to CAB in August 2017 (as well as direct supervisory responsibilities for certain registered representatives). Member Regulation asserts that this move allowed “Bartels to function as Sheridan’s primary supervisor with less time-consuming responsibilities.” We further find that CAB is qualified to serve as Sheridan’s alternate supervisor. Although we note that CAB has only been registered as a principal since 2014, the heightened supervisory plan requires that Bartels review CAB’s compliance with the plan once Bartels returns to the office

(and document his verification of CAB's compliance).⁸

We are satisfied that the following heightened supervisory procedures will enable the Firm to reasonably monitor Sheridan's activities on a regular basis:

1. Bartels will be responsible for reviewing, approving and executing each contract, agreement or fee arrangement involving Sheridan, and Bartels must approve any salary, commission, profit, or any other remuneration given to Sheridan;
2. Sheridan is responsible for her own expenses, except if a Firm client chooses to reimburse Sheridan through the Firm. In such a case, Bartels will be responsible for reviewing, approving and forwarding the expense reimbursement to Sheridan. Bartels will prepare a memorandum to the file reflecting his approval of the expense reimbursement to Sheridan. This document will be kept segregated for ease of review during any examination;
3. Bartels will serve as Sheridan's primary supervisor and CAB will serve as Sheridan's alternate supervisor, when Bartels is unavailable. Should CAB supervise Sheridan for any period of time during Bartels's absence, Bartels shall review CAB's supervision upon his return and include a memorandum to the file evidencing his review. This document will be kept segregated for ease of review during any examination;
4. Sheridan will not act in a supervisory capacity;
5. Sheridan and Bartels will meet in person at least six times per year, taking place at least once every two months, to discuss Firm business and any issues regarding this Plan of Supervision, including but not limited to Sheridan's performance and her telephone calls and meetings. At least three of the six in-person meetings will take place at Sheridan's non-branch office location in Lake Forest, IL. Bartels will maintain a written record of these meetings, which will include a description of the purpose and matters discussed.

⁸ We also find that under the circumstances, the fact that Sheridan will be supervised remotely does not serve as a basis to deny the Application. See *The Ass'n of X*, SD10003, slip op. at 8 (FINRA NAC 2010), http://www.finra.org/sites/default/files/NACDecision/p125898_0_0.pdf (redacted decision) ("While we agree that on-site supervision is the ideal standard for most statutorily disqualified individuals, we do not find that it is always necessary."). As stated above, Sheridan's duties at the Firm are narrow in scope and she interacts with institutional customers and hedge funds. Further, the heightened supervisory plan contains numerous procedures to ensure that she is stringently supervised, including six yearly in-person meetings and weekly telephonic meetings with Bartels. We conclude that these factors, along with Sheridan's general lack of regulatory and disciplinary history and her supervisors' backgrounds, support offsite supervision of Sheridan.

Records of such meetings will be maintained in a segregated file for ease of review during any examination;

6. Sheridan shall input any meetings and telephone calls on an electronic calendar, which is accessible by Bartels and Bartels will review on a daily basis;
7. All Sheridan's outgoing e-mails will be blind copied to info@racerockcap.us and reviewed by Bartels within one business day. Bartels will also review all incoming e-mails directed to Sheridan within one business day. Bartels will review any other written correspondence directed to, authored by or sent by Sheridan within one business day. Bartels will maintain, in a segregated file, a record of any concerns he notes from his review of Sheridan's communications;
8. With respect to the meetings and telephone calls with Firm clients or prospective clients, Sheridan will disclose to Bartels, on a weekly basis, details related to such meetings and calls that occurred in the previous week, as well as those meetings and calls that are scheduled for the upcoming week. The disclosure must contain the date, time, participants, topic(s) discussed or to be discussed, and the location of all of Sheridan's meetings. These materials will be maintained and kept segregated for ease of review during any examination;
9. Sheridan will seek prior approval of her outside business activities and must disclose to Bartels, at least on a monthly basis, details related to any investment-related or outside sales activities;
10. The Firm will run a background check or similar credit inquiry quarterly on Sheridan in order to check for reportable events on Sheridan's Form U4. These documents will be kept segregated for ease of review during any examination;
11. All complaints pertaining to Sheridan, whether verbal or written, will be immediately referred to Bartels for review. Bartels will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaints and the resolution of the matters. Documents pertaining to these complaints should be kept segregated for ease of review during any examination;
12. Sheridan will participate in weekly scheduled telephone calls with Bartels to ensure any new events warranting disclosure on Sheridan's Form U4 are timely and properly disclosed, such as new liens and arbitration cases and notes of those calls will be memorialized in an e-mail sent to info@racerockcap.us. These documents will be kept segregated for ease of review during any examination. During these weekly scheduled telephone

calls, Bartels and Sheridan will discuss the status of all of Sheridan's Firm relationships, communications with clients and scheduled meetings as established in paragraph 8 above;

13. Bartels will certify quarterly (March 31st, June 30th, September 30th, and December 31st) that he and Sheridan have followed and are in compliance with all the above conditions of heightened supervision. Such certifications will be kept segregated for ease of review during any examination;
14. Sheridan will only engage in transactions with accredited investors and will limit her activities to those that do not require registration with the Securities Department, Office of the Illinois Secretary of State. Bartels will monitor Sheridan's activities to ensure that Sheridan only engages in transactions with accredited investors and comports with the requirements of the exemption in Section 8A of the Illinois Securities Act of 1953, and that she does not engage in any activities that require registration with the State of Illinois. Bartels will verify that Sheridan's activities do not change, requiring registration with the State of Illinois, through his review of her meetings, calendar and communications per paragraphs 6 and 7 above and Sheridan's weekly disclosures per paragraph 8 above. Bartels will certify quarterly per paragraph 13 that there have been no changes to Sheridan's activities requiring registration with the State of Illinois; and
15. The Firm must obtain prior approval from Member Regulation if it wishes to change Sheridan's primary supervisor from Bartels to another person or make any changes to Sheridan's alternate supervisor or the Plan of Supervision.

FINRA certifies that: (1) Sheridan meets all applicable requirements for the proposed employment; (2) the Firm is not a member of any other self-regulatory organizations; (3) the Firm has represented that Sheridan is not related to Bartels or CAB by blood or marriage; and (4) the Firm employs one other statutorily disqualified individual, as discussed herein.

VII. Conclusion

Accordingly, we approve the Firm's Application to continue employ Sheridan as a general securities representative, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the association of Sheridan with the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary